

Message Text

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ACTION IO-13

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SUBJECT: U.S. STATEMENT IN COMMITTEE OF THE WHOLE, MORNING JANUARY 25

1. FOLLOWING IS TEXT OF STATEMENT OF USDEL INTRODUCING US PROPOSAL FOR ARTICLE 3 (L.44). FINAL PARAGRAPH IS TEXT IN POSITION PAPER AGREED UPON BY INS AND DEPT. DESPITE THE FACT THAT COMMITTEE RECORDS ARE SUMMARY, WE HAVE REQUESTED THAT THIS PARAGRAPH BE RECORDED VERBATIM.

2. QUOTE. THE AMENDMENT SUBMITTED BY THE UNITED STATES IN L.44 IS MARKEDLY DIFFERENT FROM THAT OF THE GROUP OF EXPERTS, IN SO FAR AS IT CONCERNS APERSONS WHO REQUEST ASYLUM AT THE FRONTIER OF A CONTRACTING STATE. UNDER ARTICLE 3, PARAGRAPH 1 OF THE GROUP OF EXPERTS' TEXT, THE CONTRACTING STATE IS REQUIRED ONLY TO USE ITS BEST ENDEAVORS TO ENSURE THAT NO PERSON IS REJECTED AT ITS FRONTIERS IF THERE ARE WELL-FOUNDED REASONS FOR BELIEVING THAT SUCH REJEC-

TION WOULD SUBJECT HIM TO PERSECUTION, PROSECUTION OR PUNISHMENT FOR ANY OF THE REASONS STATED IN ARTICLE 2. AT THE SAME TIME, THE EXPERTS' TEXT PROHIBITS THE REFOULEMENT OF ANY PERSON WHO IS ALREADY IN THE TERRITORY OF THE CONTRACTING STATE.

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3. UNDER THE UNITED STATES PROPOSAL FOR ARTICLE 3, PARAGRAPH 1 IN L.44, THE FIRM PRINCIPLE OF NON-REFOULEMENT WOULD APPLY EQUALLY TO PERSONS WHO ARE ALREADY IN THE TERRITORY OF THE CONTRACTING STATE AND TO THOSE WHO PRESENT THEMSELVES AT THE FRONTIER -- ALWAYS ON THE CONDITION OF A FINDING THAT RETURN OR REJECTION WOULD SUBJECT THE PERSON CONCERNED TO PERSECUTION. UNDER THE UNITED STATES PROPOSAL IN L.44, PARAGRAPHS 2 AND 3 OF ARTICLE 3 WOULD REMAIN IDENTI-

CAL WITH THE CORRESPONDING PARAGRAPHS OF THE GROUP OF EXPERTS' TEXT.

4. MR. CHAIRMAN, ARTICLE 33 PARAGRAPH 1 OF THE 1951 REFUGEE CONVENTION CONTAINS A PROHIBITION UPON THE CONTRACTING STATE AGAINST THE RETURN OR EXPLUSION OF A REFUGEE "IN ANY MANNER WHATSOEVER" TO THE FRONTIERS OF A TERRITORY WHERE HE WOULD FACE PERSECUTION, E.E. WHERE HIS LIFE OR FREEDOM WOULD BE THREATENED ON ACCOUNT OF HIS RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION. BUT THE LANGUAGE " IN ANY MANNER WHATSOEVER" IS AMBIGUOUS AS IT RELATED TO THE RETURN OR EXPLUSION OF A REFUGEE TO THE FRONTIERS OF A TERRITORY WHERE PERSECUTION WOULD TAKE PLACE. SOME NATIONS WHICH ARE PARTIES TO THE REFUGEE CONVENTION, OR TO THE 1967 PROTOCOL ON REFUGEES WHICH INCORPORATES THE SUBSTANTIVE PROVISIONS OF THE 1951 CONVENTION, INTERPRET ARTICLE 33 TO MEAN BOTH NON-RETURN FROM THEIR TERRITORY AND NON-REJECTION AT THEIR FRONTIER. BUT MANY OTHERS DO NOT, AND INSTEAD INTERPRET ARTICLE 33 TO MEAN ONLY THE NON-REFOULEMENT OF PERSONS WHO ARE ALREADY IN THEIR TERRITORY. THE UNITED STATES PROPOSAL FOR ARTICLE 3, PARAGRAPH 1 OF THE ASYLUM CONVENTION WOULD DO AWAY WITH THE DOUBLE STANDARD NOW PRESENT IN THE GROUP OF EXPERTS' TEXT; IT WOULD PROVIDE CLEAR AND HUMANITARIAN PROTECTION FOR THE ENDANGERED REFUGEE IN BOTH CASES; AND IT WOULD FURNISH HELPFUL AND UNAMBIGUOUS GUIDANCE TO STATES WHICH ARE PARTIES TO THE REFUGEE CONVENTION OR PROTOCOL IN THEIR IMPLEMENTATION OF ARTICLE 33 OF THAT INSTRUMENT. THIS, THEREFORE, WOULD CONSTITUTE AN ADVANCE IN INTERNATIONAL LAW ON THIS SUBJECT.

5. MR. CHAIRMAN, I WOULD LIKE TO MAKE THE FOLLOWING STATEMENT FOR UNCLASSIFIED

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THE RECORD. AS YOU KNOW, THE UNITED STATES HAS ALSO PREPARED AN AMENDED VERSION F ARTICLE 4. NATURALLY, IN IMPLEMENTING ARTICLE 3 AND ARTICLE 4 -- AMENDED AS PROPOSED BY THE UNITED STATES -- A DETERMINATION MUST BE MADE ON AN INDIVIDUAL CASE BASIS AS TO WHETHER A PERSON IS ENTITLED TO THE BENEFITS OF THE CONVENTION. IN MAKING THIS DETERMINATION THE UNITED STATES WOULD INTEND TO FOLLOW ITS NORMAL PROCEDURES. IN THE CASE OF PERSONS COMING FROM A COUNTRY WHICH HAS A LAND BORDER CONTIGUOUS TO THE UNITED STATES WHO ARE SEEKING ASYLUM AT THE FRONTIER, THESE PROCEDURES WOULD INCLUDE, EXCEPT IN URGENT CASES, THE REFERENCE OF APPLICANTS TO THE NEAREST U.S. CONSULATE FOR THE PURPOSE OF ESTABLISHING THEIR STATUS. END QUOTE. CATTO

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